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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 7

ENGLAND, ET AL.,

Appellants,

vs.

LOUISIANA STATE BOARD OF MEDICAL EXAMINERS, ET AL.,

Appellees.

On Appeal from the Three-Judge United States District Court for the Eastern District of Louisiana.

BRIEF FOR THE APPELLEES.

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LOUISIANA PRINTING CO., INC., NEW ORLEANS

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On Appeal from the Three-Judge United States District Court for the Eastern District of Louisiana.

BRIEF FOR THE APPELLEES.

May It Please the Court:

In answer to the brief filed for appellants we are essentially reiterating our motion to dismiss or affirm. Appellees, Louisiana State Board of Medical Examiners, Dr. Rhett McMahon, President of the Board, and Dr. Edwin Lawson, Secretary-Treasurer of the Board, and intervenor, Louisiana State Medical Society, move the Court to dismiss the appeal herein on the grounds hereinafter set forth, or to affirm the judgment sought to be reviewed on appeal on the ground that it is manifest that the questions on which the decision of this cause

depend are so unsubstantial as not to need further argument.

In this proceeding a number of chiropractors sought a declaration of their right to practice without complying with the requirements of the Louisiana Medical Practice Act, La. R.S. 37:1261, *et seq.* They challenged the applicability of the Act to their profession, and its constitutionality if so construed. On remand by the Court of Appeals from an initial judgment of dismissal, *England vs. Louisiana State Board of Medical Examiners*, 259 F. 2d 628, *reh. den.*, 263 F. 2d 661, *cert. den.*, 359 U.S. 1012, a three-judge court was convened.

After a hearing, the three-judge court abstained from deciding the issues and remitted the parties to the courts of Louisiana so that those tribunals might "determine the issues here presented." Jurisdiction was retained "for the purpose of taking such action as may be necessary for the just disposition of the litigation, absent a prompt state court determination." *England vs. Louisiana State Board of Medical Examiners*, 180 F. Supp. 121 (E.D. La. 1960).

Appropriate proceedings were filed in the state courts and the Louisiana Court of Appeals for the Fourth Circuit, affirming the trial court, ultimately found against plaintiff's contention, expressly holding that the application of the Medical Practice Act to chiropractic examiners, though it effectively deprived them of practicing their profession or cult, did not violate any provision of the Federal Constitution. *England vs. Louisiana State Board of Medical Examiners*, 126 So. 2d 51 (La. App. 1961). On February 15, 1961, the Louisiana Supreme Court refused to review that decision, stating "The judgment of the Court of Appeal is correct." La.

Sup. Ct. No. 45,509. No appeal was taken to the Supreme Court of the United States. The appellants then filed a motion in the three-judge United States District Court entitled: "Motion to Vacate Abstention Order and for a Temporary Restraining Order". The appellees filed a motion for dismissal of the cause. The matter was heard by the three-judge court which held in effect that it had no power to review the decision of the courts of Louisiana and that appellants' proper remedy had been by appeal to the Supreme Court of the United States. This latter decision is reported in 194 F. Supp. 521, and is also quoted in full in the Appendix to appellants' "Statement as to Jurisdiction".

It hardly seems necessary to present further argument as the opinion of the three-judge court clearly points out that the issues presented on this appeal "are so unsubstantial as not to need further argument". The three-judge court refers to the cases of *Government Employees vs. Windsor*, 353 U.S. 364, and *Rooker vs. Fidelity Trust Co.*, 263 U.S. 413.

In the *Windsor* case, *supra*, this Honorable Court held that the district court should retain jurisdiction of the suit until efforts to obtain appropriate adjudication in the state courts were exhausted. In the *Rooker* case, *supra*, this Honorable Court held that where a state court had passed on the federal questions, well established principles will bar a relitigation of those issues in the United States District Court.

We also refer the Court to the case of *Louisiana Power and Light Co. vs. Thibodaux*, 360 U.S. 25, wherein this Honorable Court concluded:

> "The judgment of the Court of Appeals is reversed and the stay order of the District Court

> reinstated. We assume that both parties will cooperate in taking prompt and effective steps to secure a declaratory judgment under the Louisiana Declaratory Judgment Act, La. Rev. Stat., 1950, Tit. 13, Secs. 4231-4246, and a review of that judgment by the Supreme Court of Louisiana. **By retaining the case the District Court, of course, reserves power to take such steps as may be necessary for the just disposition of the litigation should anything prevent a prompt state court determination.**" (Emphasis ours.)

Since the filing of our brief there have been a number of developments by decisions of this Court. In particular we refer to *N.A.A.C.P. vs. Button*, 371 U.S. 415 (1963), which is highly relied upon by the appellants. We wish to direct particular attention to the fact that the orignial decision in this case, *Harrison vs. N.A.A.C.P.*, 360 U.S. 167 (1959), was vacated and the cause remanded with instructions for the district court to abstain in order to afford the state courts an opportunity to construe the statutes in question. On review of the subsequent state decision this Court stated:

> "Where, however, the party remitted to the state courts elects to seek a complete and final adjudication of his rights in the state courts, **the District Court's reservation of jurisdiction is purely formal, and does not impair our jurisdiction to review directly an otherwise final state court judgment.** *Lassiter vs. Northampton County Board of Elections*, 360 U.S. 45, 3 L. ed. 2d 1072, 79 S. Ct. 985. We think it clear that petitioner made such an election in the instant case, by seeking from the Richmond Circuit Court 'a binding adjudication' of all its claims and a permanent injunction as well as declaratory relief, by making no reservation to the disposition of the entire case by the state courts, and by coming here directly on certiorari. Therefore, the judgment of the Vir-

> ginia Supreme Court of Appeals was final, and the case is properly before us. 371 U.S. 415, 9 L. ed. 2d at 415. (Emphasis ours.)

In the present action the three-judge federal court adopted the doctrine of abstention and in doing so followed the language of this Court by stating that they only retained jurisdiction for a just disposition of the litigation should anything prevent a state court determination. As a matter of fact the state court acted most promptly in the matter and a decision was handed down by the court of appeals and affirmed by the State Supreme Court in less than a year. *England vs. Louisiana State Board of Medical Examiners*, 126 So. 2d 51 (La. App. 1961), *reh. den.* Jan. 30, 1961, *cert. den.* Feb. 15, 1961, La. Supreme Court, Docket No. 45,509.

In these circumstances we suggest that the federal district court, having announced the doctrine of abstention, could not under any circumstances act as a court of appeals over the decision of the State Supreme Court.

The doctrine of abstention must mean one thing or another. Either it means nothing or its means that the federal district court should be bound by the decision of the highest court in the state.

In addition to the authorities we have already cited we wish to direct the attention of the Court to the following decisions decided since the filing of our last brief. See *United Gas Pipe Line Co. vs. Ideal Cement Co.*, 369 U.S. 134 (1962); *Two Guys From Harrison-Allentown vs. McGinley*, 366 U.S. 582 (1961); *Metlakatla Indian Community vs. Egan*, 363 U.S. 555 (1960); *Clay vs. Sun Ins. Office, Ltd.*, 363 U.S. 207 (1960).

CONCLUSION

We wish to conclude by stating that there either is a doctrine of abstention or that it does not exist and if the federal district court decides to abstain and refers the matter to the state courts there is no reason for them to have the right to act as a court of appeal. The legal remedy of the appellants in this case, if any they had, was to appeal direct to this Court from the decision of the Louisiana Supreme Court.

All of which is respectfully submitted.

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CERTIFICATE

I, Robert E. LeCorgne, Jr., one of the attorneys for appellees herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 24th day of September, 1963, copies of the foregoing brief were served on the appellants herein by air-mailing same in duly addressed envelopes with postage prepaid to their attorneys of record, as follows:

To J. Minos Simon, 301 Congress Street, Lafayette, Louisiana, Russell Morton Brown, Suite 500, Bowen Building, 815 Fifteenth Street, N.W., Washington 5, D. C., and Floyd J. Reed, 919 Maison Blanche Building, New Orleans 16, Louisiana, Attorneys of Record for Appellants.

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